trict of Keokuk, 53 Ia. 352. The defendant remained only under the common-law duty not to create an obstruction or defect in the sidewalk. Hence the court held rightly that the violation of the ordinance is of no evidential value on the question of negligence.

EVIDENCE — SIMILAR FACTS AND OCCURRENCES — HABIT. — In an action for arrears of wages, the defendant offered evidence that it was his habit to pay his laborers at regular intervals. There was no other evidence of payment. *Held*, that the evidence is inadmissible. *Moyer* v. *Berndt*, 19 Pa. Dist. R. 869 (Pa., C. P., Berks Co.). See NOTES, p. 312.

GOOD WILL — RESTRICTIONS ON VENDOR. — Two months before the termination of a trade partnership, two of the partners sold to the third their interest in the assets, good will, and other property of the firm. The purchaser understood that the retiring partners were to engage in a competitive business and the price paid was only slightly greater than the book value of the property transferred. The purchaser sought to enjoin the vendors from soliciting the trade of, or dealing with, the customers of the old firm. *Held*, that they will be enjoined from soliciting the trade of the old customers but not from dealing with them. *Von Bremen* v. *MacMonnies*, 200 N. Y. 41. See NOTES, p. 311.

HOMICIDE — RESPONSIBILITY FOR DEATH CAUSED BY FRIGHT. — The prisoner assaulted A, and thereby so frightened A's mother-in-law, who was near by, that she died from the shock. *Held*, that the prisoner was rightly convicted of manslaughter. *Ex parte Heigho*, 110 Pac. 1029 (Idaho).

The early English law did not hold responsible one whose unlawful act caused death by fright alone. 1 HALE, PLEAS OF THE CROWN, 429. This was probably due to a fear of encouraging prosecution for witchcraft. See STEPHEN, DIG. CRIM. LAW, 6 ed., Art. 242, n. 2. Later authority holds the defendant responsible in such a case, though where the point has arisen the victim was the one toward whom the defendant's threats of violence were directed. *Regina* v. *Dugal*, 4 Quebec 350. The principal case has taken the next logical step in applying the doctrine of the later cases where the person killed is not the intended victim. It may be difficult to prove that death was in fact the result of the unlawful act, but since the burden is on the state to prove its case beyond a reasonable doubt, the difficulty of proof only favors the prisoner. Once it is established that the defendant's unlawful act has in fact caused death, he should be responsible whether death was due to fright or to physical violence. *Cf.* *Regina* v. *Towers*, 12 Cox C. C. 530.

HUSBAND AND WIFE — CONTRACTS BETWEEN HUSBAND AND WIFE — VALIDITY OF SEPARATION AGREEMENTS. — The plaintiff sued for himself and as trustee of the defendant's wife on a bond, given to secure the performance of a separation agreement. When the agreement was made, to avoid scandal and notoriety the defendant and his wife occupied the same apartments but had ceased to have sexual intercourse. *Held*, that the bond is enforceable. *Levy* v. *Goldsoll*, 131 S. W. 420 (Tex., Ct. Civ. App.).

An agreement for future separation, made while the parties are living together, is void, but an agreement made after a separation has actually taken place is valid. *Grime* v. *Borden*, 166 Mass. 198. See 15 HARV. L. REV. 147. The reason for this doctrine against contracts for future separation is that it is against public policy to encourage married people to live apart. See *Bowers* v. *Hutchinson*, 67 Ark. 15, 24. That reason, of course, fails where the parties have already parted. But the cases do not fix any rule as to what constitutes sufficient present separation to enable a valid separation agreement to be made. In the principal case, however, it is obvious that the parties are merely nominally living together. The law regards very highly the importance of marital

intercourse. This may be shown by the fact that cohabitation without marital intercourse does not necessarily amount to condonation. *Guthrie* v. *Guthrie*, 26 Mo. App. 566. See 2 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, § 280. And Mr. Bishop even contends that on principle refusal of copulation should be ground for divorce for desertion. See 1 BISHOP, MARRIAGE, DIVORCE, AND SEPARATION, §§ 1676–1683. But in this position he is not supported by authority. *Southwick* v. *Southwick*, 97 Mass. 327.

HUSBAND AND WIFE — RIGHTS OF WIFE AGAINST HUSBAND AND IN HIS SEPARATE PROPERTY — RIGHT TO BE REIMBURSED FOR EXPENDITURES FOR NECESSARIES. — The plaintiff, a married woman, having been abandoned by her husband without just cause, and being unable to procure necessaries on his credit, purchased them with the proceeds of her labor and of her separate estate. She sought to recover from her husband the amount so expended. *Held*, that the plaintiff can recover, being subrogated to the rights of the persons who furnished the necessaries. *De Brauwere* v. *De Brauwere*, 44 N. Y. L. J., Nov. 1910 (N. Y. Sup. Ct.). See NOTES, p. 306.

INTERSTATE COMMERCE — CONTROL BY STATES — REGULATION OF RATES OF INTERSTATE FERRIES. — A New Jersey statute of 1799 empowered the boards of freeholders to fix the fares to be charged at ferry stations within their respective counties. The board of Hudson County fixed the rates to be taken by ferries plying between that county and New York City. *Held*, that the rates are valid. *Port Richmond & Bergen Point Ferry Co.* v. *Board of Chosen Freeholders*, 77 Atl. 1046 (N. J., Sup. Ct.).

This case differs in its facts from that commented upon in 23 HARV. L. REV. 484 only as involving a New York instead of a New Jersey ferry corporation, its charter permitting a higher charge than that fixed by the freeholders.

INTERSTATE COMMERCE — WHAT CONSTITUTES INTERSTATE COMMERCE — BREAKING OF ORIGINAL PACKAGE BY AGENT FOR DELIVERY. — A corporation sent a box, containing various packages, from a foreign state to the defendant, to deliver the packages to customers whom the defendant had procured. The defendant opened the box and delivered the packages. Certain food commodities were under weight, and the defendant was prosecuted by the state for violating the state pure food laws in delivering them. *Held*, that the defendant was engaged in interstate commerce and so not subject to the state laws. *State* v. *Eckenrode*, 127 N. W. 56 (Ia.).

Courts still make the test of the termination of an interstate shipment whether the original package has been broken, yet they are hedging the rule about with limitations. The doctrine is wholly abrogated as to the taxation of goods shipped from another state. *American Steel & Wire Co.* v. *Speed*, 192 U. S. 500. If the size of the package is reduced below normal for the purpose of evading state regulation the shipment is held not subject to the rule. *Austin* v. *Tennessee*, 179 U. S. 343. See 18 HARV. L. REV. 530. The principal case illustrates another such exception. Where separate packages are combined in a bundle this latter is the original package. *May* v. *New Orleans*, 178 U. S. 496. Yet where such bundle is sent to an agent who breaks and delivers the separate packages to previous purchasers the shipment is held not terminated until actual delivery. The result would be different if the consignee, upon breaking the package, were free to dispose of the individual articles as he chose. The principal case seems sound, as the agent is merely assisting in a continuous shipment to the purchaser. *Rearick* v. *Pennsylvania*, 203 U. S. 507. These arbitrary exceptions to the original-package doctrine show its unsoundness as a hard and fast rule, and that it is becoming merely one of the factors to be considered in determining whether a shipment is terminated.